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KIRBY CORPORATION

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DEPT. OF TRANSPORTATION
COAST GUARD

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Document Management Facility (USCG-2003-14472/MARAD-2003-15171) — 11
U.S. Department of Transportation
Room PL-401
Four Hundred Seventh Street, S.W.
Washington, DC 20590-0001

Re: Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking (Docket Nos. USCG-2003-14472/MARAD-2003-15171)

Dear Sir or Madam:

Kirby Corporation very much appreciates this opportunity to present its comments in response to the Coast Guard's and Maritime Administration's joint notice of proposed rulemaking to further amend the agencies' respective regulations relating to lease-financing of vessels engaged in the coastwise trade (Docket Nos. USCG-2003-14472/MARAD-2003-15171).

Kirby Corporation, through its vessel operating subsidiaries, is a major operator of towing vessels and tank barges on the inland waterways of the United States. Currently, Kirby operates 233 inland towing vessels and 874 inland tank barges, with 16 million barrels of capacity, all engaged in the coastwise trade. Those towing vessels and the majority of those tank barges are documented vessels with coastwise endorsements. Those tank barges which are not documented engage in the coastwise trade pursuant to 46 USC 12110(b). Kirby employs its vessels to provide transportation services to a wide array of manufacturers, refiners, traders and other shippers, including most of the nation's major oil and chemical companies. Kirby employs over 2,000 U.S. citizens in support of those coastwise operations, over 1,300 of which are employed aboard Kirby vessels.

The Jones Act is integral to Kirby's business. Since the enactment of 46 U.S.C. 12106(e) in 1996, Kirby has made over \$600,000,000 in capital expenditures for the acquisition and maintenance of vessels qualified to engage in the coastwise trade. This significant investment was made in reliance on the continued integrity of the U. S.

cabotage laws. It is imperative that the Coast Guard and the Maritime Administration fully preserve the U.S.-ownership requirements of those cabotage laws through the referenced rulemaking. The regulations issued pursuant to 46 U.S.C. 12106(e) must be clearly and unambiguously crafted to absolutely preserve those U.S.-ownership requirements and to protect the capital investments legitimately made in reliance on those requirements by U.S. companies such as Kirby. Those regulations must not be susceptible to interpretation or manipulation so as to allow non-citizens to gain control of vessels engaged in the U.S. coastwise trade and, in turn, jeopardize those investments. The regulatory loophole must be closed completely.

The final rule published by the Coast Guard on February 4, 2004, made significant progress toward the closing of that loophole. The referenced rulemaking must promptly finish the job. Kirby fully endorses and supports the actions proposed by the American Waterways Operators and the Maritime Cabotage Task Force, in their comments to the referenced dockets, to achieve this result. In brief, we strongly urge the following regulatory action:

- Adopt Alternative 2 as set forth in the NPRM, amending 46 CFR 67.20(a)(9) and prohibiting charter-back arrangements in which a lease financed vessel is chartered back to the vessel owner or member of the owner's group of companies, except when the vessel is engaged in carrying proprietary cargo for the owner or a member of the owner's group;
- Impose a three-year limit on the grandfathering of coastwise endorsements issued before the February 4, 2004, final rule; and
- Establish procedures providing for contracting with third-party auditors as needed to assist the Coast Guard in its review of applications for documentation and requiring that applications for documentation in which the applicant is affiliated with a non-citizen vessel owner or operator, or in which the lease-financed vessel will be subject to a charter-back arrangement, be subject to public notice and comment.

We thank you for this opportunity to present our comments on this issue of enormous significance to the United States and to its domestic maritime industry. We would be pleased to answer any questions that the Coast Guard or the Maritime Administration may have, now or in the future.

Very truly yours,



Gerald A. Gallion
Corporate Counsel